

AMENDED IN SENATE APRIL 26, 2004

AMENDED IN SENATE MARCH 30, 2004

AMENDED IN SENATE MARCH 15, 2004

SENATE BILL

No. 1201

Introduced by Senator Torlakson

February 10, 2004

An act to amend ~~Sections 374 and~~ *Section* 701.8 of the Public Utilities Code, relating to electrical restructuring, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1201, as amended, Torlakson. Electrical restructuring: BART.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act requires the commission to authorize direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers to acquire service from certain electricity suppliers after a period of time to be determined by the commission until the Department of Water Resources no longer supplies electricity under that law. Existing law authorizes the San Francisco Bay Area Rapid Transit District's (BART) system to elect to obtain electricity from multiple sources, including (1) preference power purchased from a federal power marketing agency or its successor, (2) electricity supplied by one or more direct transactions, and (3) electricity supplied by any electric utility regulated by the commission that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system. Existing law requires any

electrical corporation that owns and operates transmission and distribution facilities that deliver electricity to BART, upon request by BART, to deliver preference power purchased from a federal power marketing agency or its successor, without discrimination or delay.

This bill would additionally require any electrical corporation that owns and operates transmission and distribution facilities that deliver electricity to BART, upon request by BART, to deliver electricity purchased from a local publicly owned electric utility, as defined, without discrimination or delay. ~~The bill would make other conforming changes.~~

Because a violation of the Public Utilities Act or an order of the commission is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.

The bill would declare that, due to the special circumstances applicable only to the BART District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — Section 374 of the Public Utilities Code is~~
- 2 *SECTION 1. The Legislature finds and declares all of the*
- 3 *following:*
- 4 *(a) The San Francisco Bay Area Rapid Transit (BART) District*
- 5 *provides essential public transit services that are funded by fares*
- 6 *and taxes.*
- 7 *(b) The BART District has qualified under the Reclamation*
- 8 *Project Act of 1939 as amended and supplemented as a preference*

1 *entity for purposes of purchasing electricity from the Central*
2 *Valley Project (preference power).*

3 *(c) The BART system has been continuously served by*
4 *preference power, a publicly owned electricity supply, since before*
5 *electrical restructuring and before the energy crisis of 2000–01,*
6 *pursuant to the terms and conditions established by the enactment*
7 *of Senate Bill 184 (Chapter 681 of the Statutes of 1995).*

8 *(d) It is the intent of the Legislature in enacting this act, to*
9 *authorize the BART District to receive electric service from*
10 *another publicly owned supplier of electricity on the same terms*
11 *authorized by Chapter 681 of the Statutes of 1995.*

12 ~~amended to read:~~

13 ~~374. (a) In recognition of statutory authority and past~~
14 ~~investments existing as of December 20, 1995, and subject to the~~
15 ~~firewall specified subdivision (c) of Section 367, the obligation to~~
16 ~~pay the uneconomic costs identified in Sections 367, 368, 375, and~~
17 ~~376 shall not apply to the following:~~

18 ~~(1) One hundred ten megawatts of load served by irrigation~~
19 ~~districts, as hereafter allocated by this paragraph:~~

20 ~~(A) The 110 megawatts of load shall be allocated among the~~
21 ~~service territories of the three largest electrical corporations in the~~
22 ~~ratio of the number of irrigation districts in the service territory of~~
23 ~~each utility to the total number of irrigation districts in the service~~
24 ~~territories of all three utilities.~~

25 ~~(B) The total amount of load allocated to each utility service~~
26 ~~area shall be phased in over five years beginning January 1, 1997,~~
27 ~~so that one-fifth of the allocation is allocated in each of the five~~
28 ~~years. Any allocation which remains unused at the end of any year~~
29 ~~shall be carried over to the succeeding year and added to the~~
30 ~~allocation for that year.~~

31 ~~(C) The load allocated to each utility service territory pursuant~~
32 ~~to subparagraph (A) shall be further allocated among the~~
33 ~~respective irrigation districts within that service territory by the~~
34 ~~California Energy Resources Conservation and Development~~
35 ~~Commission. An individual irrigation district requesting such an~~
36 ~~allocation shall submit to the commission by January 31, 1997,~~
37 ~~detailed plans that show the load that it serves or will serve and for~~
38 ~~which it intends to utilize the allocation within the timeframe~~
39 ~~requested. These plans shall include specific information on the~~
40 ~~irrigation districts' organization for electric distribution;~~

1 ~~contracts, financing and engineering plans for capital facilities, as~~
2 ~~well as detailed information about the loads to be served, and shall~~
3 ~~not be less than eight megawatts or more than 40 megawatts.~~
4 ~~Provided, however, any portion of the 110 megawatts that remains~~
5 ~~unallocated may be reallocated to projects without regard to the 40~~
6 ~~megawatts limitation. In making such an allocation among~~
7 ~~irrigation districts, the Energy Resources Conservation and~~
8 ~~Development Commission shall assess the viability of each~~
9 ~~submission and whether it can be accomplished in the timeframe~~
10 ~~proposed. The Energy Resources Conservation and Development~~
11 ~~Commission shall have the discretion to allocate the load covered~~
12 ~~by this section in a manner that best ensures its usage within the~~
13 ~~allocation period.~~

14 ~~(D) At least 50 percent of each year's allocation to a district~~
15 ~~shall be applied to that portion of load that is used to power pumps~~
16 ~~for agricultural purposes.~~

17 ~~(E) Any load pursuant to this subdivision shall be served by~~
18 ~~distribution facilities owned by, or leased to, the district in~~
19 ~~question.~~

20 ~~(F) Any load allocated pursuant to paragraph (1) shall be~~
21 ~~located within the boundaries of the affected irrigation district, or~~
22 ~~within the boundaries specified in an applicable service territory~~
23 ~~boundary agreement between an electrical corporation and the~~
24 ~~affected irrigation district; additionally, the provisions of~~
25 ~~subparagraph (C) of paragraph (1) shall be applicable to any load~~
26 ~~within the Counties of Stanislaus or San Joaquin, or both, served~~
27 ~~by any irrigation district that is currently serving or will be serving~~
28 ~~retail customers.~~

29 ~~(2) Seventy-five megawatts of load served by the Merced~~
30 ~~Irrigation District hereafter prescribed in this paragraph:~~

31 ~~(A) The total allocation provided by this paragraph shall be~~
32 ~~phased in over five years beginning January 1, 1997, so that~~
33 ~~one-fifth of the allocation is received in each of the five years. Any~~
34 ~~allocation which remains unused at the end of any year shall be~~
35 ~~carried over to the succeeding year and added to the allocation for~~
36 ~~that year.~~

37 ~~(B) Any load to which the provision of this paragraph is~~
38 ~~applicable shall be served by distribution facilities owned by, or~~
39 ~~leased to, Merced Irrigation District.~~

1 ~~(C) A load to which the provisions of this paragraph are~~
2 ~~applicable shall be located within the boundaries of Merced~~
3 ~~Irrigation District as those boundaries existed on December 20,~~
4 ~~1995, together with the territory of Castle Air Force Base which~~
5 ~~was located outside of the district on that date.~~

6 ~~(D) The total allocation provided by this paragraph shall be~~
7 ~~phased in over five years beginning January 1, 1997, with the~~
8 ~~exception of load already being served by the district as of June 1,~~
9 ~~1996, which shall be deducted from the total allocation and shall~~
10 ~~not be subject to the costs provided in Sections 367, 368, 375, and~~
11 ~~376.~~

12 ~~(3) To loads served by irrigation districts, water districts, water~~
13 ~~storage districts, municipal utility districts, and other water~~
14 ~~agencies which, on December 20, 1995, were members of the~~
15 ~~Southern San Joaquin Valley Power Authority, or the Eastside~~
16 ~~Power Authority; provided, however, that this paragraph shall be~~
17 ~~applicable only to that portion of each district or agency's load that~~
18 ~~is used to power pumps which are owned by that district or agency~~
19 ~~as of December 20, 1995, or replacements thereof, and is being~~
20 ~~used to pump water for district purposes. The rates applicable to~~
21 ~~these districts and agencies shall be adjusted as of January 1, 1997.~~

22 ~~(4) The provisions of this subdivision shall no longer be~~
23 ~~operative after March 31, 2002.~~

24 ~~(5) The provisions of paragraph (1) shall not be applicable to~~
25 ~~any irrigation district, water district or water agency described in~~
26 ~~paragraph (2) or (3).~~

27 ~~(6) Transmission services provided to any irrigation district~~
28 ~~described in paragraph (1) or (2) shall be provided pursuant to~~
29 ~~otherwise applicable tariffs.~~

30 ~~(7) Nothing in this chapter shall be deemed to grant the~~
31 ~~commission any jurisdiction over irrigation districts not already~~
32 ~~granted to the commission by existing law.~~

33 ~~(b) To give the full effect to the legislative intent in enacting~~
34 ~~Section 701.8, the costs provided in Sections 367, 368, 375, and~~
35 ~~376 shall not apply to electricity purchased or delivered pursuant~~
36 ~~to subdivision (b) of Section 701.8, provided the electricity is used~~
37 ~~solely for the customer's own systems load and not for sale. The~~
38 ~~costs of this provision shall be borne by all ratepayers in the~~
39 ~~affected service territory, notwithstanding the firewall established~~
40 ~~in subdivision (e) of Section 367.~~

~~(c) To give effect to an existing relationship, the obligation to pay the uneconomic costs specified in Sections 367, 368, 375, and 376 shall not apply to that portion of the load of the University of California campus situated in Yolo County that was being served as of May 31, 1996, by preference power purchased from a federal marketing agency, or its successor, provided the power is used solely for the facility load of that campus and not, directly or indirectly, for sale.~~

SEC. 2. Section 701.8 of the Public Utilities Code is amended to read:

701.8. (a) To ensure that the commission regulated electric utilities do not operate their transmission and distribution monopolies in a manner that impedes the ability of the San Francisco Bay Area Rapid Transit District (BART District) to reduce its electricity cost through the purchase and delivery of preference power, electrical corporations shall meet the requirements of this section.

(b) Any electric utility regulated by the commission that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system shall, upon request by the BART District, and without discrimination or delay, use the same facilities to deliver preference power purchased from a federal power marketing agency or its successor, or electricity purchased from a local publicly owned electric utility, as defined in Section 9604.

(c) Where the BART District purchases electric power at more than one location, at any voltage, from an electric utility under tariffs regulated by the commission, the utility shall bill the BART District for usage as though all the electricity purchased at transmission level voltages were metered by a single meter at one location and all the electricity purchased at subtransmission voltages were metered by a single meter at one location, provided that any billing for demand charges would be based on the coincident demand of transmission and distribution metering.

(d) If, on or after January 1, 1996, the BART District leases or has agreed to lease, as special facilities, utility plants for the purpose of receiving power at transmission level voltages, an electric utility regulated by the commission may not terminate the lease without concurrence from the BART District.

1 (e) When the BART District elects to have electricity delivered
2 pursuant to subdivision (b), neither Sections 365 and 366, and any
3 commission regulations, orders, or tariffs, that implement direct
4 transactions, are applicable, nor is the BART District an electricity
5 supplier. Neither the commission, nor any electric utility that
6 delivers the federal power or electricity purchased from a local
7 publicly owned electric utility to the BART District, shall require
8 that an electricity supplier be designated as a condition of the
9 delivery of that power.

10 (f) The BART District may elect to obtain electric power from
11 the following multiple sources at the same time:

12 (1) Electric power delivered pursuant to subdivision (b).

13 (2) Electric power supplied by one or more direct transactions.

14 (3) Electric power from any electric utility regulated by the
15 commission that owns and operates transmission and distribution
16 facilities that deliver electricity at one or more locations to the
17 BART District's system.

18 SEC. 3. The Legislature finds and declares that, because of the
19 unique circumstances applicable only to the San Francisco Bay
20 Area Rapid Transit District, a statute of general applicability
21 cannot be enacted within the meaning of subdivision (b) of Section
22 16 of Article IV of the California Constitution. Therefore, this
23 special statute is necessary.

24 SEC. 4. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.

33 SEC. 5. This act is an urgency statute necessary for the
34 immediate preservation of the public peace, health, or safety
35 within the meaning of Article IV of the Constitution and shall go
36 into immediate effect. The facts constituting the necessity are:

- 1 In order to ensure the continued delivery of electricity to the San
- 2 Francisco Bay Area Rapid Transit District at an affordable rate, it
- 3 is necessary for this act to take effect immediately.

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